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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD857/2016
File Title: In the matter of King Holding Company 1 Pty Limited (administrators appointed)(receivers and managers appointed)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 3/06/2016 8:52:43 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Affidavit

No. NSD of 2016

Federal Court of Australia
 District Registry: New South Wales
 Division: General

IN THE MATTER OF KING HOLDING COMPANY 1 PTY LIMITED (ADMINISTRATORS APPOINTED)(RECEIVERS AND MANAGERS APPOINTED) ACN 162 529 384 AND THE ENTITIES LISTED IN THE SCHEDULE

Barry Frederic Kogan, Jason Preston and Theodora Alice Eszenyi as joint and several voluntary administrators of King Holding Company 1 Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 529 384 and the entities listed in the schedule

Plaintiffs

Affidavit of: Barry Frederic Kogan
 Address: Level 12, 20 Martin Place, Sydney, New South Wales
 Occupation: Official Liquidator and Chartered Accountant
 Date: 2 June 2016

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Filed on behalf of (name & role of party) Barry Kogan, Jason Preston and Theodora Eszenyi, plaintiffs
 Prepared by (name of person/lawyer) Anthony Sommer
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 (include state and postcode) Our reference: AGS:JCB 1133382
 ME_130380155_4 (W2007)

I Barry Frederic Kogan of Level 12, 20 Martin Place, Sydney, New South Wales,
 Official Liquidator and Chartered Accountant say on oath:

1. I am a plaintiff in these proceedings.
2. I am a partner of McGrathNicol and work out of the Sydney office of McGrathNicol. McGrathNicol is a corporate advisory and insolvency firm which specialises in receiverships, administrations and liquidations.

Administrators' appointment

3. On 11 May 2016, Jason Preston, Theodora Alice Eszenyi and I were appointed as joint and several voluntary administrators (together, the **Administrators**) pursuant to resolutions of the boards of directors under section 436A of the *Corporations Act 2001* (Cth) (**Act**) of the following Australian incorporated companies:
 - (a) King Holding Company 1 Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 529 384 (**KHC1**);
 - (b) King Holding Company 2 Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 530 761 (**KHC2**);
 - (c) King Bid Company Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 530 930 (**KBC**);
 - (d) Oakville Produce Group Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 119 179 216 (**OPG**);
 - (e) Oakville Produce Asian Holdco Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 955 857 (**OPH Asian**);
 - (f) Oakville Produce Australian HoldCo Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 162 558 714 (**OPH Australian**);
 - (g) Oakville Produce Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 119 180 004 (**OP**);
 - (h) Oakville Produce Qld Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 071 791 369 (**OPQ**);
 - (i) OP Holdco SA Pty Limited (Administrators Appointed)(Receivers and Managers Appointed) ACN 127 656 400 (**OPSA**);

- (j) Oakville Potatoes Pty Ltd (Administrators Appointed)(Receivers and Managers Appointed) ACN 080 208 671 (**Oakville Potatoes**);
- (k) Golden Sunrise Produce Pty Ltd (Administrators Appointed)(Receivers and Managers Appointed) ACN 126 506 303 (**GSP**);
- (l) Lachlan Produce Pty Ltd (Administrators Appointed)(Receivers and Managers Appointed) ACN 113 179 883 (**LP**); and
- (m) Oakville Produce Export Pty Ltd (Administrators Appointed) ACN 169 302 416 (**OPE**),

(together, the **Companies** and each a **Company**).

4. At the time of swearing this affidavit, the directors of the Companies have not provided to the Administrators a report as to affairs (**RATA**) for each of the Companies. The Administrators have granted an extension of time to the directors of the Companies until 11 June 2016 for the delivery of the RATAs.

This affidavit

5. I make this affidavit in support of the Originating Process filed with this affidavit (**Originating Process**) which seeks an order pursuant to sections 439A(6) and 447A of the Act that the convening periods for the Companies be extended for a period of six months, up to 8 December 2016. Unless extended, under section 439A(5)(a) of the Act, the convening period will expire on 8 June 2016.
6. I make this affidavit from my own knowledge and from information I have obtained through my role as one of the Administrators.
7. Where I express an opinion in this affidavit, I have spoken to each of Mr Preston and Ms Eszenyi about that opinion. Each of them has informed me, and I verily believe, that they share that opinion.
8. Shown to me at the time of swearing this affidavit and marked '**BFK1**' are two lever arch folders of documents divided by tabs and paginated (**Exhibit**). Where I refer to a tab number, it is a reference to the document appearing behind that tab in the Exhibit. Where I refer to a page number, it is a reference to that page of the Exhibit.

The Administrators' experience

9. I have practised in insolvency for more than 19 years. I am a Chartered Accountant. I have been a Registered Liquidator since 10 November 2010 (registration number

384878) and an Official Liquidator of the Supreme Court of New South Wales since 6 December 2010 (registration number 390488). Exhibited at **Tab 1** is a copy of my current curriculum vitae which outlines my relevant professional qualifications and experience.

10. My partners and co-appointees, Mr Preston and Ms Eszenyi are each registered liquidators and official liquidators of the Supreme Court of New South Wales and the Supreme Court of South Australia, respectively. Mr Preston has practised in the insolvency industry for over 18 years and Ms Eszenyi has practised in the insolvency industry for over 28 years. Exhibited at **Tab 2** and **3** respectively are copies of the curriculum vitae for each of Mr Preston and Ms Eszenyi.

Appointment of the Administrators to the Companies

11. Exhibited at **Tab 4** are copies of the extracts for each of the Companies from the records of the Australian Securities and Investments Commission (**ASIC**) dated 2 June 2016.
12. Exhibited at **Tab 5** are copies of the Resolutions of Directors for each of the Companies dated 11 May 2016.
13. Exhibited at **Tab 6** is a copy of the Consents of Administrators to Act for each of the Companies dated 11 May 2016.

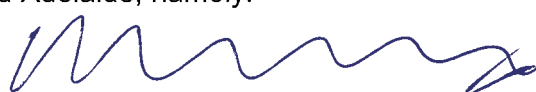
Appointment of Receivers and Managers to the Companies

14. Following the Administrators' appointment, on 11 May 2016, Vaughan Strawbridge, David Lombe and Tim Heenan of Deloitte Touche Tohmatsu were appointed to act as joint and several receivers and managers (**Receivers**) of the Companies (excluding OPE) (the **Receivership Companies**), by security trustee, CBA Corporate Services (NSW) Pty Ltd (the **Secured Creditor**) on behalf of a syndicate of financiers, the holder of an all present and after-acquired property security interest, registered on the Personal Property Securities Register (**PPSR**) in favour of the Secured Creditor.
15. Exhibited at **Tab 7** is a copy of the notifications of the Receivers' appointment to each of the Companies (excluding OPE) which were lodged with ASIC and dated 12 May 2016.
16. On their appointment, the Receivers took possession of all of the books and records of the Receivership Companies. The Receivers have taken control over the Receivership Companies' assets and affairs, subject to the matters in respect of which the Administrators have conduct of.

17. The Receivers have continued to operate the businesses of the Receivership Companies as going concerns. As a result, the Administrators' costs and expenses relate to the general carriage of the administration of the Companies, but not the trading activities of the Companies. The Receivers on behalf of the Secured Creditor have indemnified us for the Administrators' fees and costs to an initial sum of \$150,000 (plus GST and legal fees). The Administrators intend to use this funding to conduct the administration and to work with the Receivers to investigate any proposals which may emerge with a view to maximising the return to creditors consistent with the objectives of the voluntary administration process as set out in section 435A of the Act.
18. The Receivers have made the books and records of the Receivership Companies available to me as necessary including for the purpose of preparing this affidavit.

The Companies' business operations

19. Exhibited at **Tab 8** is a copy of the corporate group structure of the Companies.
20. KHC1 is the ultimate holding company of the Companies and holds 100 percent of the shares of KHC2, KBC and OPG. OPH Asian and OPH Australian are wholly owned subsidiaries of OPG. OP and OPQ are wholly owned subsidiaries of OPH Australian. LP, OPE and OPSA are wholly owned subsidiaries of OP. Oakville Potatoes and GSP are wholly owned subsidiaries of OPSA.
21. The holding entities (i.e. KHC1, KHC2, KBC, OPG, OPH Australia, OPH Asian, OPE and OPSA) do not have any assets or any employee or trade creditors. Those entities only have liabilities comprising of intercompany loans (and amounts owing to the Secured Creditor).
22. The multi-faceted trading entities (i.e. OP and OPQ) businesses comprise of the following activities conducted in Sydney and Queensland, namely:
- (a) potato and onion growing;
 - (b) packaging;
 - (c) wholesaling;
 - (d) marketing; and
 - (e) logistics and distribution.
23. The farming entities (i.e. LP, Oakville Potatoes and GSP) businesses comprise of the following activities conducted in Griffith and Adelaide, namely:

- (a) potato and onion growing; and
 - (b) wholesaling.
24. The Companies operate 3 farms in South Australia, 3 farms in New South Wales and 3 distribution centres in Sydney, Melbourne and Brisbane.

OP

25. OP is a trading entity having operations mainly focussed in New South Wales with fresh produce and wholesale business units including:
- (a) Fresh produce for New South Wales, Victoria, South Australia, Western Australia;
 - (b) Agtec Agriculture;
 - (c) Administration; and
 - (d) Wholesale operations for Victoria.
26. OP's key assets include:
- (a) Land (Hillston area);
 - (b) Plant and equipment;
 - (c) Trade debtors; and
 - (d) Inventory.
27. As at the date of swearing this affidavit, OP has approximately 181 employees and 228 trade creditors to a value of approximately \$6.9 million.

Oakville Potatoes

28. Oakville Potatoes is a trading entity having operations mainly focussed in South Australia with farming and wholesaling business units.
29. Oakville Potatoes' key assets include:
- (a) Land (Nildottie, South Australia);
 - (b) Plant and equipment;
 - (c) Trade debtors; and

(d) Inventory.

30. As at the date of swearing this affidavit, Oakville Potatoes has approximately 47 employees and 124 trade creditors to a value of approximately \$1.9 million.

GSP

31. GSP is a non-trading entity having operations mainly focussed in South Australia holding fixed assets and employees.

32. GSP's key assets include:

(a) Land (Parrakie, Karte and Pinnaroo (all in South Australia)); and

(b) Plant and equipment.

33. As at the date of swearing this affidavit, GSP has approximately 15 employees and 4 trade creditors to a value of approximately \$100,000.

OPQ

34. OPQ is a trading entity having operations mainly focussed in Queensland with fresh produce and wholesale business units including:

(a) Fresh produce Queensland; and

(b) Wholesale Queensland.

35. OPQ's key assets include:

(a) Plant and equipment;

(b) Trade debtors; and

(c) Inventory.

36. As at the date of swearing this affidavit, OPQ has approximately 51 trade creditors to a value of approximately \$500,000. OPQ does not have any employees, with all Queensland-based employees being employed by OP.

LP

37. LP is a trading entity having operations mainly focussed in Griffith, New South Wales with farming and wholesaling business units.



38. LP's key assets include:
- (a) Plant and equipment;
 - (b) Trade debtors; and
 - (c) Inventory.
39. As at the date of swearing this affidavit, LP has approximately 45 trade creditors to a value of approximately \$300,000. LP does not have any employees, with all Griffith-based employees being employed by OP.

Financial position of the Companies

40. My initial inquiries have established that the various secured creditors (including the Secured Creditor and subordinated secured creditors) of the Companies are owed in the vicinity of \$150 million, and that the various unsecured creditors are owed in the vicinity of \$13 million. The unsecured creditors comprise 250 employees owed in the vicinity of \$3.3 million (excluding redundancy payments) and 450 trade creditors owed in the vicinity of \$9.7 million. As the Administrators' investigations continue, these figures are subject to change.
41. As at the date of the Administrators' appointment, the Companies' annualised revenues were approximately \$250 million.
42. Exhibited at **Tab 9** is a schedule of the secured and unsecured creditors of the Companies.
43. The amounts owing to creditors of the Companies as recorded for the first meetings of the creditors of the Companies admitted for the purposes of voting (the **Known Creditors**) is based on a combination of:
- (a) actual amounts contained in the books and records of the Companies; and
 - (b) the amounts contained in the proofs of debt submitted for the first meetings for the creditors of the Companies pursuant to section 436E of the Act (**First Creditors' Meetings**). Exhibited at **Tab 9** are schedules of the Known Creditors of the Companies.
44. Given the size and relative complexity of the business operated by the Companies, it is not possible at this stage to identify the precise reason or reasons for the failure of the businesses. The Administrators' investigations in relation to this matter are only at their initial stages.



Work conducted to date since the Administrators' appointment

45. Since the Administrators' appointment, we have carried out a wide range of tasks, including the following:

General administration tasks

- (a) Liaising with the Secured Creditor pursuant to the first ranking registered security interests over the Companies, including correspondence regarding the administration strategy;
- (b) Dealing with issues relating to the employment of the Companies' employees;
- (c) Reviewing and considering the books and records of the Companies to identify the creditors of the Companies;
- (d) Liaising with the holders of security interests registered against the Companies on the PPSR;
- (e) Liaising with management and the Board of Directors on statutory duties and obligations;
- (f) Addressing shareholder and unsecured creditor queries;
- (g) Dealing with and responding to media inquiries;
- (h) Opening new bank accounts;

Statutory obligations

- (i) Producing and lodging with ASIC the required documentation in respect of:
 - (i) the appointment of the Administrators; and
 - (ii) the convening of the first meetings of creditors of the Companies pursuant to section 436E of the Act (**First Creditors' Meetings**);
- (j) Notifying the Australian Taxation Office and other government bodies of the appointment of the Administrators and attending to registration for goods and services tax purposes;
- (k) Notifying the Known Creditors of the First Creditors' Meetings;



Employees

- (l) Holding discussions with and issuing various communications to the employees of the Companies including in relation to the Fair Entitlements Guarantee regime;

Directors

- (m) Issuing documentation to the directors regarding their responsibilities and a request as to RATAs and other information in respect of the Companies' affairs;
- (n) Liaising with the directors and senior management of the Companies;

First Creditors' meetings

- (o) Identifying from the books and records of the Companies the creditors of the Companies;
- (p) Preparing the Notices and Circular to Creditors for the First Creditors' Meetings (**Circular to Creditors**);
- (q) Preparing for the First Creditors' Meetings (held in Sydney, Adelaide, Brisbane and Griffith);
- (r) Collecting and adjudicating proxies and proofs of debt ahead of the First Creditors' Meetings (held in Sydney, Adelaide, Brisbane and Griffith);
- (s) Conducting the First Creditors' Meetings (held in Sydney, Adelaide, Brisbane and Griffith);
- (t) Preparing minutes of the First Creditors' Meetings (held in Sydney, Adelaide, Brisbane and Griffith);

Preliminary investigations

- (u) Commencing the Administrators' investigations of the Companies required pursuant to section 438A of the Act, including considering possible courses of action;

Sale of the business by the Receivers

- (v) The Receivers caused to be published advertisements for the sale of the assets of the Receivership Companies' on or about 17 May 2016. The Receivers requested that expressions of interest be provided by 6 June 2016;

- (w) I have received a letter from the Receivers in respect of the sale of the Companies' business and/or assets (**Receivers' Letter**). In the letter the Receivers set out a timetable in respect of their sale processes once the date for non-binding indicative offers has passed (**Receivers' Timetable**). Exhibited at **Tab 10** is a copy of the Receivers' Letter.

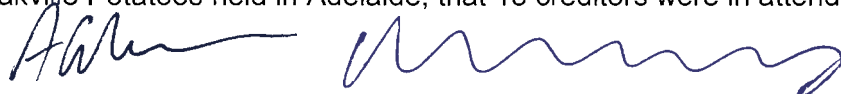
First Creditors' Meetings

46. On 16 May 2016, the Administrators sent to all Known Creditors of each of the Companies a circular giving Notice of the First Creditors' Meetings of each of the Companies required under section 436E of the Act. Separate meetings were held in Sydney, Adelaide, Brisbane and Griffith for certain of the Companies because the Administrators considered each of those places to be most convenient for the majority of creditors of certain of those Companies who were entitled to receive notices of the meetings.
47. Exhibited at **Tab 11** is a copy of the Circular to Creditors.
48. On 16 May 2016, the Administrators caused a copy of the Circular to Creditors to be uploaded to the McGrathNicol website (**McGrathNicol Oakville Produce Group Website**), which is accessible to the general public. Exhibited at **Tab 12** is a copy of the McGrathNicol Oakville Produce Group Website relating to the administration of the Companies as at 2 June 2016.
49. On 16 May 2016, the Administrators caused the notice of the First Creditors' Meetings required by section 436E(3) of the Act to be lodged with ASIC (**ASIC Notice**). Exhibited at **Tab 13** is a copy of the ASIC Notice.
50. On 23 May 2016, the Administrators conducted the First Creditors' Meetings of certain of the Companies in Sydney, Adelaide, Brisbane and Griffith. The questions raised by creditors of the Companies are recorded in the minutes of the meetings. Exhibited at **Tab 14** is a copy of the minutes of the First Creditors' Meetings for eight of the Companies.
51. Exhibited at **Tab 15** is a copy of the slides that were shown to the creditors at the First Creditors' Meeting (**Slide Pack**).
52. I acted as chairperson of the First Creditors' Meetings held in Sydney. I informed the creditors at the First Creditors' Meetings that the Administrators intended to approach the Court for an extension of the convening periods for up to six months before conducting



the second meetings of creditors. This is also stated at slide numbers 9 and 20 of the Slide Pack exhibited at **Tab 15**.

53. No creditors at those meetings raised any objection with respect to the proposed application to extend the convening periods.
54. Ms Eszenyi acted as chairperson of the First Creditors' Meetings held in Adelaide. Mr Preston acted as chairperson of the First Creditors' Meeting held in Griffith. My partner, Anthony Connelly, acted as chairperson (under authority granted by me) of the First Creditors' Meeting held in Brisbane.
55. I am informed by Ms Eszenyi, Mr Preston and Mr Connelly respectively, and verily believe that the creditors at the First Creditors' Meetings held in Adelaide, Griffith and Brisbane, were conducted in an identical manner to the meetings that I conducted in Sydney. I understand that each of the chairpersons of those meetings informed their respective creditors that the Administrators intended to approach the Court for an extension of the convening period for up to six months before conducting the second meeting of creditors. This is also stated at slide numbers 9 and 20 of the Slide Pack, which I understand were presented to the creditors in attendance at each of those meetings.
56. I am informed by Ms Eszenyi, Mr Preston and Mr Connelly respectively, and verily believe that no creditors at the First Creditors' Meetings held in Adelaide, Griffith and Brisbane, raised any objection with respect to the proposed application to extend the convening period.
57. Exhibited at **Tab 16** is a schedule of the number of creditors who attended at the First Creditors' Meetings. The Secured Creditor was represented at each meeting.
58. A Committee of Creditors was appointed in respect of certain of the Companies. Resolutions forming the Committees (for certain companies) were passed at the First Creditors' Meetings.
59. Exhibited at **Tab 14** is a copy of the minutes of the First Creditors' Meetings for eight of the Companies.
60. The minutes of the First Creditors Meetings for the remaining 5 of the Companies whose First Creditors' Meetings were held in Sydney, Adelaide, Griffith and Brisbane are in the process of being finalised.
61. I am informed by Ms Eszenyi, and verily believe, that in respect of the First Creditors' Meeting of Oakville Potatoes held in Adelaide, that 13 creditors were in attendance.



62. I am informed by Mr Connelly and verily believe, that in respect of the First Creditors' Meeting of GSP held in Brisbane, 2 creditors were in attendance and in respect of the First Creditors' Meeting of OPQ, 7 creditors were in attendance.
63. I am informed by Mr Preston and verily believe, that in respect of the First Creditors' Meeting of LP held in Griffith, 10 creditors were attendance.
64. The minutes of the First Creditors' Meeting of OPE, are also in the process of being finalised. No creditors were personally or by proxy in attendance at this meeting however, the effect of the ASIC Class Order 98/1418 adopted by Deed of Cross Guarantee for the wholly-owned entities of KHC1 dated 30 July 2013 and as amended on 9 December 2014 and 20 May 2015 (**Class Order**), is that all creditors that were in attendance at the First Creditors' Meeting of OP were admitted to vote by the chairperson as contingent creditors of OPE. In those circumstances, 8 creditors were in attendance.

Reasons for extension of convening period

65. The following are the reasons for seeking an extension of the convening period to 8 December 2016:
- (a) The extension is required to allow the sale of the relevant businesses of the Receivership Companies on a going concern basis by the Receivers. There are 6 farms under the control of the Companies of which 3 are in South Australia and 3 are in New South Wales as well as 3 distribution centres in Sydney, Melbourne and Brisbane. These large and complex business structures referred to at paragraphs 19 to 39 require a significant period of time before any sale process can be completed.
 - (b) Due to the number of farms and distribution centres throughout various locations, there are a large number of stakeholders which need to be involved in the sale process to make it successful and produce the best possible return to creditors.
 - (c) Once any contracts for sale have been entered into, it may take a significant period of time for sales to complete particularly given the licences and other agreements, including leases, that may need to be transferred or novated to a purchaser (or purchasers). These factors will add to the time required to complete the sale processes. The Receivers' Letter (referred to in paragraph 45(w) above) expands on the various matters that need to be addressed as part of the complex sale completion process.



- (d) The Receivers' Timetable (referred to in paragraph 45(w) above) refers to an estimation of the time required to conduct a sale process in respect of the businesses of the Receivership Companies. Particularly given the nature of the businesses, I would consider that a further period of at least one month must be taken into account for the acceptance of final offers made, the preparation of contracts for sale and settlement periods under various sale contracts.
- (e) Based on the Receivers' Timetable and my experience in conducting similar large scale sales processes, it is my view that a completion of the sale processes will take a period of at least six months to complete, particularly taking into account the contingency for any failed settlements, and other complications that often arise in sale processes.
- (f) As part of the sale of the businesses and/or assets of the Companies by the Receivers, I consider that there is a prospect that a deed of company arrangement (**DOCA**) will be proposed. If such a proposal is made, further time would be required for such a proposal to be developed, negotiated and considered by the Administrators and put to creditors of the Companies. Given the size and complexity of the businesses, it is likely that a period of time, of up to six months, will be required to allow for any DOCA to be finalised and (if necessary) integrated into any sale process.
- (g) Given the stage of the administrations, the Administrators are presently unable to provide any meaningful recommendation or proposal to creditors as required under section 439A of the Act which will provide a recommendation to the creditors in respect of the future of the Companies. As referred to in paragraph 4 above, the directors of the Companies have not provided a RATA for each of the Companies. Further, the Administrators intend to conduct detailed investigations into the Companies' affairs including for the purpose of identifying the cause of the financial collapse and establishing whether any funds are available to be recovered or claims pursued. Any such funds would be available for distribution to the creditors. Actions that could be pursued include recovery of voidable transactions, making a claim against the directors of the Companies in respect of insolvent trading, and seeking compensation for breaches or contraventions by officers, directors or other parties. In addition to requiring time to present a sale or DOCA proposal to creditors, the Administrators require further time to investigate the likelihood of any recoveries for the purposes of their section 439A report. Given the size and complexity of the Companies' affairs, I would consider that a



period of up to six months is necessary to allow the Administrators to properly undertake this task.

66. I do not consider that the extension of the convening period by six months will cause any material prejudice to any creditor of the Companies. Rather, I consider that the extensions are likely to increase the possibility of a greater return to the majority of creditors by allowing sufficient time for the Receivers' sale process to occur. In my view, a sale of the businesses of the Companies on a going concern basis is very likely to achieve a far higher return for creditors than would be realised in winding up the Companies. I also believe that a voluntary administration process will provide far more flexibility around sale structuring than a liquidation. By way of example, given the licences and other agreements, including leases in place, the voluntary administration process will afford the appropriate moratorium protections to allow the sale processes to be effected.
67. Particularly having regard to the size of the exposure to creditors and the size and complexity of the undertaking comprising the businesses of the Companies, in my view it is critical to allow the Receivers sufficient time to put in place a suitable sale program.

Notice of Application

68. On 1 June 2016, the Administrators' solicitors, MinterEllison gave ASIC notice of the proposed application. Exhibited at **Tab 17** is a copy of a letter delivered by hand to ASIC dated 1 June 2016 from the Administrators' solicitors, MinterEllison. ASIC has indicated that it does not wish to be provided with a copy of the originating process or this affidavit in support of this application. Exhibited at **Tab 18** is a copy of an email dated 1 June 2016 from Patricia Hu of ASIC to Anthony Sommer of MinterEllison.
69. On 1 June 2016, the Administrators posted on the McGrathNicol Oakville Produce Group Website a copy of a notice stating that the Administrators would approach the Court for the purpose of bringing this application (**Application Notice**). Exhibited at **Tab 19** is a copy of the Application Notice which was posted to the McGrathNicol Oakville Produce Group Website.
70. No other material creditors of the Companies have been identified by the Administrators since the First Creditors' Meetings.
71. The Receivers have taken control of the Receivership Companies' assets and have continued to operate the businesses of the Companies as going concerns. As a result, I expect that the Receivers will meet their obligations to suppliers and other trade creditors of the Companies.

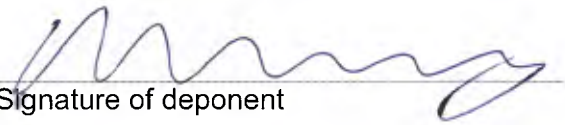


72. OP, Oakville Potatoes and GSP are the only Companies that employ staff. The Receivers have advised the Administrators that they will continue to meet the employees' entitlements during the period in which they continue to trade the businesses of the Receivership Companies.
73. The Receivers will be required to meet their obligations to pay rent for the real property for the period of time that they use the premises during the course of the administration.
74. Based on all of the reasons stated above, I believe that it is in the best interest of the creditors and members of the respective Companies for the orders sought in the Originating Process to be made. I do not believe that any interested persons will be unfairly prejudiced by the orders sought in the Originating Process.

Two handwritten signatures in blue ink are located at the bottom of the page. The signature on the left is a cursive 'Ahu' followed by a horizontal line. The signature on the right is a more complex, wavy cursive signature.

Sworn by the deponent
at Sydney
in New South Wales
on 2 June 2016
Before me:

)
)
)
)
)


Signature of deponent



Signature of witness
Anthony George Sommer, solicitor

I, Anthony George Sommer, a solicitor, certify the following matters concerning the making of this affidavit by the person who made it:

- 1 I saw the face of the person.
- 2 I have confirmed the person's identity using an identification document and the document I relied on was *Current NSW Driver Licence Number 12514643*

Signature of witness: 

Date: 2 June 2016